

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **FOR THE**  
3                                   **EASTERN DISTRICT OF PENNSYLVANIA**

4       JOSEPH KENDRA,                                   )

5                                   Plaintiff                                   )

6                                   v.                                   )

7                                   BLUESTEM BRANDS, INC. d/b/a                                   )  
8       FINGERHUT,                                   )

9                                   Defendant                                   )  
10       \_\_\_\_\_

Case No.:

COMPLAINT AND DEMAND FOR  
JURY TRIAL

11                                   **COMPLAINT**

12               JOSEPH KENDRA (“Plaintiff”), by and through his attorneys, KIMMEL &  
13       SILVERMAN, P.C., allege the following against BLUESTEM BRANDS, INC.  
14       d/b/a FINGERHUT (“Defendant”):

15                                   **INTRODUCTION**

16               1.       Plaintiff’s Complaint is based on the Telephone Consumer Protection  
17       Act, 47 U.S.C. § 227 *et seq.* (“TCPA”).  
18

19                                   **JURISDICTION AND VENUE**

20               2.       Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See  
21       Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).  
22

23               3.       Defendant conducts business in the Commonwealth of Pennsylvania,  
24       and as such, personal jurisdiction is established.  
25

1           4.     Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

2                                   **PARTIES**

3           5.     Plaintiff is a natural person residing in Philadelphia, Pennsylvania  
4 19154.

5           6.     Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

6           7.     Defendant is a company with its principal place of business located at  
7  
8 7075 Flying Cloud Drive, Eden Prairie, Minnesota 55344.

9           8.     Defendant is a “person” as that term is defined by 47 U.S.C. § 153  
10 (39).

11           9.     At all relevant times, Defendant acted through its agents, employees,  
12 officers, members, directors, heirs, successors, assigns, principals, trustees,  
13  
14 sureties, subrogees, representatives, and insurers.

15                                   **FACTUAL ALLEGATIONS**

16           10.    Plaintiff has a cellular telephone.

17           11.    Plaintiff has only used this phone as a cellular telephone.

18           12.    Beginning in or around March or April 2017 and continuing through  
19  
20 June 2017, Defendant called Plaintiff on his cellular telephone on a repetitive and  
21 continuous basis.

22           13.    When contacting Plaintiff on his cellular telephone, Defendant used  
23  
24 an automatic telephone dialing system and/or automatic and/or pre-recorded  
25

1 messages.

2 14. Plaintiff knew Defendant was using an automatic telephone dialing  
3 system and/or automatic and/or pre-recorded messages as he would be regularly  
4 greeted with a discernible delay or pause prior to speaking to Defendant's  
5 representatives.  
6

7 15. Defendant's telephone calls were not made for "emergency  
8 purposes."  
9

10 16. Although Plaintiff had an account with Defendant, he revoked  
11 consent for Defendant to call his cellular telephone in or around May 2017.

12 17. Specifically, Plaintiff told Defendant to stop calling him, thereby  
13 revoking any consent previously given to Defendant to place calls to his cellular  
14 telephone number.  
15

16 18. Once Defendant was informed that its calls were unwanted and to  
17 stop calling, there was no lawful purpose to making additional calls, nor was there  
18 any good faith reason to place calls.  
19

20 19. Defendant heard and acknowledged Plaintiff's revocation of consent,  
21 as well as, his demand to stop calling his cellular telephone number.

22 20. Nevertheless, Defendant persisted in calling Plaintiff on his cellular  
23 telephone multiple times per day thereafter.  
24

25 21. Defendant's persistent calls were particularly annoying and vexing

1 since he was often interrupted while at work.

2 22. In addition to the incessant calls from Defendant, Plaintiff also  
3 received automated voice messages.

4 23. After Defendant ignored Plaintiff's clear demand to stop calling,  
5 Plaintiff ultimately downloaded a blocking application in order to curtail these  
6 unwanted calls.  
7

8 24. Upon information and belief, Defendant conducts its business in a  
9 manner that violates the TCPA.  
10

11  
12 **COUNT I**  
13 **DEFENDANT VIOLATED THE**  
14 **TELEPHONE CONSUMER PROTECTION ACT**

15 25. Plaintiff incorporates the forgoing paragraphs as though the same  
16 were set forth at length herein.

17 26. Defendant initiated multiple automated telephone calls to Plaintiff's  
18 cellular telephone using an automated message and/or prerecorded voice and/or  
19 automatic telephone dialing system.  
20

21 27. Defendant's calls to Plaintiff were not made for emergency purposes.

22 28. Defendant's calls to Plaintiff were not made with Plaintiff's prior  
23 express consent, especially calls made in or after May 2017, as Plaintiff revoked  
24 any previous consent given to call his cellular telephone.  
25

1           29. Defendant's acts as described above were done with malicious,  
2 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights  
3 under the law and with the purpose of harassing Plaintiff.

4           30. The acts and/or omissions of Defendant were done unfairly,  
5 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,  
6 lawful right, legal defense, legal justification or legal excuse.

7           31. As a result of the above violations of the TCPA, Plaintiff has suffered  
8 the losses and damages as set forth above entitling Plaintiff to an award of  
9 statutory, actual and trebles damages.  
10

11  
12                                   **PRAYER FOR RELIEF**

13           WHEREFORE, Plaintiff, JOSEPH KENDRA, respectfully prays for a  
14 judgment as follows:  
15

- 16           a. All actual damages suffered pursuant to 47 U.S.C. §  
17               227(b)(3)(A);  
18           b. Statutory damages of \$500.00 per violative telephone call  
19               pursuant to 47 U.S.C. § 227(b)(3)(B);  
20           c. Treble damages of \$1,500 per violative telephone call pursuant  
21               to 47 U.S.C. §227(b)(3);  
22           d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);  
23           e. Any other relief deemed appropriate by this Honorable Court.  
24  
25

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, JOSEPH KENDRA, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Date: July 14, 2017

By: /s/ Amy L. Bennecoff Ginsburg  
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